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ADV-00-669

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BY _____
DEPUTY

7 Attorneys for Plaintiffs
 8

9 MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY
 10

11 MEL PARKER and LERAH
 12 PARKER,

Cause No. ADV-00-669

13 Plaintiffs,

THOMAS M. MCKITTRICK

14 vs.

15 W. R. GRACE & COMPANY
 16 (CONNECTICUT); W. R. GRACE
 17 & COMPANY (DELAWARE);
 18 KOOTENAI DEVELOPMENT
 19 COMPANY; MICHAEL D. RAY, D/B/A
 20 RAY ENGINEERING; ROBINSON
 21 INSULATION COMPANY; JACK
 22 DeSHAZER; and DOES A-Z,

COMPLAINT AND JURY DEMAND

23 Defendants.
 24

GENERAL ALLEGATIONS

I.

23 Plaintiffs Mel and Lerah Parker are residents and citizens of Libby, Lin-
 24 coln County, Montana.

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II.

Defendant W. R. Grace & Company (Connecticut) is a business corporation for profit organized and existing under the laws of the State of Connecticut and has principal places of business in the States of Maryland and Florida. At all times relevant to this complaint, W. R. Grace & Company (Connecticut) has engaged in the business of mining and processing of vermiculite within the State of Montana.

III.

Defendant W. R. Grace & Company (Delaware) is a business corporation for profit organized and existing under the laws of the State of Delaware and has its principal places of business in Maryland and Florida. At all times relevant to this complaint, W. R. Grace & Company (Delaware) has engaged in the business of mining and processing of vermiculite within the State of Montana. [Hereinafter defendants W. R. Grace & Company (Connecticut) and W. R. Grace & Company (Delaware) may be referred to from time to time as the "Grace defendants."]

IV.

Defendant Kootenai Development Company (Kootenai Development) is a Montana corporation. Its principal place of business is Libby, Montana. Kootenai Development has done business and continues to do business in the State of Montana. Kootenai Development's principal asset is real property located in Lincoln County, Montana. In 1994, defendant Kootenai Development purchased the former vermiculite mining operations on Zonolite Mountain from the Grace defendants. Kootenai Development continues to own that site to this day. One or

1 both of the Grace defendants has a controlling interest in Kootenai Development.
2 Mark G. Owens, a former manager for the Grace defendants, is an officer, director,
3 and agent of Kootenai Development.

4 V.

5 Defendant Michael D. Ray is a resident and citizen of Libby, Lincoln
6 County, Montana. According to the records of the Secretary of State of the State
7 of Montana, defendant Michael D. Ray has done business as a professional engi-
8 neer under the assumed business name of Ray Engineering in Libby, Lincoln
9 County, Montana.

10 VI.

11 Defendant Jack DeShazer is a citizen of the State of Montana and is a
12 real estate agent with a principle place of business in Libby, Lincoln County, Mon-
13 tana. Defendant Jack DeShazer was the agent of the Grace defendants. On be-
14 half of the Grace defendants, defendant Jack DeShazer listed and sold to the
15 plaintiffs a 21.1 acre parcel on the Kootenai River in Lincoln County, Montana,
16 which had formerly been used by the Grace defendants and Zonolite Company as
17 a Screening Plant for their asbestos contaminated vermiculite concentrate (the
18 Screening Plant property).

19 VII.

20 Defendant Robinson Insulation Company (Robinson Insulation) was a
21 business corporation for profit organized and existing under the laws of the State
22 of Montana with its principal place of business in Great Falls, Cascade County,
23 Montana. For many years, Robinson Insulation, acting as a W. R. Grace licensee,
24 operated in Great Falls, Montana an expansion plant, where Robinson Insulation

1 received, processed, and sold products containing the Grace defendants' asbestos
2 contaminated vermiculite. Said products were formulated according to the require-
3 ments and specifications of the Grace defendants.

4 VIII.

5 The true names and capacities of the defendants named herein as
6 Does A-Z, inclusive, are unknown to the plaintiffs at this time, who therefore bring
7 this action against said defendants by fictitious name. Plaintiffs will seek leave to
8 amend their complaint to state the true names and capacities of Does A-Z when
9 the same have been ascertained, together with further charging allegations, as ap-
10 propriate. Plaintiffs are informed and believe and thereon allege that each of said
11 fictitiously named defendants may be legally responsible in some manner for the
12 occurrences alleged herein and that plaintiffs' damages as alleged herein may
13 have been proximately caused in part by said defendants' unlawful acts or
14 omissions.

15 IX.

16 This court has subject matter jurisdiction over this action and personal
17 jurisdiction over each of the parties.

18 X.

19 Venue in this action is proper in Cascade County, Montana, because
20 one of the defendants, Robinson Insulation Company, committed tortious conduct
21 within Cascade County.

22 XI.

23 For many years prior to 1963, Zonolite Company operated a vermicu-
24 lite mining and processing plant on Zonolite Mountain, located a few miles outside

1 of Libby, in Lincoln County, Montana.

2 XII.

3 In 1963, the Grace defendants purchased the Zonolite Company and
4 assumed responsibility for the operations at the vermiculite facilities. By the ex-
5 press terms of their agreement to purchase Zonolite Company, the Grace defen-
6 dants assumed the liability of Zonolite Company.

7 XIII.

8 Following the purchase of Zonolite Company, the Grace defendants
9 expanded the vermiculite ore production on Zonolite Mountain and for approxi-
10 mately the next three decades extracted millions of tons of vermiculite ore. Ver-
11 miculite ore from Zonolite Mountain was processed by the Grace defendants in
12 Libby, as well as shipped to processing plants throughout the United States.

13 XIV.

14 The Grace defendants had actual knowledge, at the time of their pur-
15 chase of Zonolite Company, that the vermiculite ore originating from Zonolite
16 Mountain was heavily contaminated with asbestos. The Grace defendants were
17 aware of reliable estimates that ore originating from Zonolite Mountain regularly
18 contained in excess of 20% asbestos.

19 XV.

20 Asbestos is an extremely deadly substance because it consists of tiny
21 needle like fibers that are sharply pointed and easily penetrate and lodge in the
22 linings of the lungs. Human lungs are unable to remove asbestos that has
23 speared itself into lung tissue, and the asbestos spears cannot be washed out of
24 the lung tissues by blood. As a result, affected lung areas become inflamed, in

1 time heavily scarred, and ultimately nonfunctional. For those who undergo this
2 disease process, it becomes increasingly more difficult to breathe. Ultimately, the
3 person suffocates.

4 XVI.

5 The sinister effects of asbestos exposure are compounded by the fact
6 that diseases caused by asbestos have long latency periods. It is not uncommon
7 for persons to be first diagnosed with potentially fatal diseases many years follow-
8 ing their initial exposure to asbestos.

9 XVII.

10 At all times relevant to this action, the defendants had actual knowl-
11 edge that asbestos was extremely hazardous and that exposure to asbestos
12 causes potentially fatal diseases, including asbestosis, lung cancer, and
13 mesothelioma.

14 XVIII.

15 For decades prior to 1993, the Grace defendants and Zonolite Compa-
16 ny operated a Screening Plant and associated facilities, which occupied much of a
17 21.1 acre parcel on the Kootenai River in Lincoln County, Montana (the Screening
18 Plant property). While the Screening Plant property was operated by the Grace
19 defendants and Zonolite Company, vermiculite concentrate mined and milled on
20 Zonolite Mountain was screened, stored, and moved by conveyor belt through a
21 system of tunnels and across the Kootenai River to a rail loading operation adja-
22 cent to a Burlington Northern Railway line. Virtually 100% of the vermiculite con-
23 centrate ever mined and milled on Zonolite Mountain was screened, stored, and
24 transported through said property.

XIX.

In 1992, the plaintiffs and the Grace defendants entered into an Agreement to Sell and Purchase by which plaintiffs agreed to purchase from the Grace defendants said 21.1 acre parcel, including the Screening Plant property and all buildings and fixtures on the property. Prior to and at the time said Agreement to Sell and Purchase was executed, the Grace defendants knew that the plaintiffs intended to reside on the property and to operate thereon a wholesale nursery and a covered storage facility. In the Agreement to Sell and Purchase entered into between the plaintiffs and the Grace defendants, the Grace defendants promised to clean and landscape the property. Thereafter, without disclosing to the plaintiffs any dangers inherent therein, the Grace defendants further polluted the Screening Plant property and dumped on said property waste material from Zonolite Mountain, which was laden with and contaminated by asbestos. In accordance with said Agreement to Sell and Purchase, the plaintiffs purchased the Screening Plant property from the Grace defendants in 1993, without any knowledge that the Screening Plant property was contaminated with deadly asbestos.

XX.

Although the Grace defendants knew for many years prior to selling the Screening Plant property to the plaintiffs that the vermiculite mined and milled on Zonolite Mountain and processed at the Screening Plant was contaminated with deadly asbestos, the Grace defendants represented to the plaintiffs, by both words and deeds, that said property was safe and suitable for human occupancy and use. The Grace defendants never disclosed prior to plaintiffs' purchase of the said property that the Grace defendants' operations had caused the property to

1 become heavily contaminated with deadly asbestos or that the vermiculite left on
2 the property was dangerous.

3 XXI.

4 Prior to the sale of the Screening Plant property to the plaintiffs, the
5 Grace defendants were aware of confidential medical tests by Zonolite Company
6 that demonstrated that a substantial portion of Zonolite Company's workforce had
7 contracted lung disease as a result of exposure to asbestos from the Zonolite
8 Mountain facilities.

9 XXII.

10 Prior to the sale of the Screening Plant property to the plaintiffs, the
11 Grace defendants conducted medical testing on workers to assess the health im-
12 pacts of their asbestos and vermiculite exposure. The Grace defendants' tests re-
13 vealed high incidence of lung disease among its workers. The Grace defendants
14 concealed these ongoing adverse health effects from those exposed, from the
15 plaintiffs, and from the public at large.

16 XXIII.

17 Prior to the sale of the Screening Plant property to the plaintiffs, the
18 Grace defendants conducted animal tests to assess the health effects of exposure
19 to asbestos originating from its facilities at Zonolite Mountain. Those tests demon-
20 strated to the Grace defendants that asbestos originating from Zonolite Mountain
21 caused deadly diseases, including asbestosis, lung cancer, and mesothelioma.
22 The Grace defendants concealed these results from the plaintiffs, from public
23 agencies having responsibility to protect public health and welfare, and from the
24 public at large.

1 XXIV.

2 Upon purchasing the Screening Plant property, the plaintiffs moved
3 onto the property and commenced successful construction and operation of a busi-
4 ness known as The Raintree Nursery. Until 1999, plaintiffs used the Screening
5 Plant property as their primary residence; as a wholesale nursery; as a covered
6 storage facility for recreational vehicles, motor boats, and other equipment; and as
7 a mushroom farm.

8 XXV.

9 In 1999, as a result of public disclosures concerning significant human
10 health risks associated with asbestos contamination caused by the defendants in
11 Lincoln County, the plaintiffs first suspected that the property they had purchased
12 from the Grace defendants in 1993 was contaminated with dangerous levels of as-
13 bestos. Shortly after these public disclosures, the United States Environmental
14 Protection Agency (EPA) conducted tests on the plaintiffs' property and adjacent
15 lands to determine the extent of and the risks created by Grace's contamination.

16 XXVI.

17 Sampling conducted from December 1999 through April 2000 detected
18 amphibole asbestos fibers at concentrations of concern in indoor air samples col-
19 lected at the Screening Plant property. These sample results indicated an ongoing
20 risk to the plaintiffs, family members, workers, and visitors of the property. Plain-
21 tiffs' children and grandchildren regularly visited said property, and unwittingly
22 worked and played in the asbestos contaminated vermiculite. The nursery work-
23 force (6 to 20 workers, depending on the season) were also regularly exposed to
24 asbestos while working at the Screening Plant property. There were also frequent

1 visits by people storing recreational vehicles on said property, or who had busi-
2 ness with the nursery.

3 XXVII.

4 In addition to significant air concentrations, soils at the Screening Plant
5 property contained high levels of amphibole asbestos which can act as a continu-
6 ing source of exposure to individuals working and living at the properties. Rocks
7 uncovered at the Screening Plant property contain high concentrations of fibrous
8 form amphibole asbestos. These rocks were transported by the Grace defendants
9 from the Zonolite Mountain mine waste area and were dumped on the Screening
10 Plant property by the Grace defendants after the plaintiffs entered into the Agree-
11 ment to Sell and Purchase in 1992.

12 XXVIII.

13 Dust samples collected in 1999 from window sills in the building used
14 by the plaintiffs as their main residence and samples from the "Long Shed"
15 showed abundant long, thin amphibole asbestos fibers. Visible dust accumula-
16 tions were prevalent in all of the buildings at the Screening Plant property.

17 XXIX.

18 Rainy Creek Road is immediately adjacent to the plaintiffs' property
19 and leads directly to the Grace mine on Zonolite Mountain. Over the years it oper-
20 ated the mine, the Grace defendants surfaced and resurfaced the road with mine
21 waste heavily laden with asbestos. Logging trucks operated by Kootenai Develop-
22 ment frequently drove up and down the road to log timber at or near the mine site,
23 creating large clouds of road dust that would flow over the plaintiffs' property, fur-
24 ther contaminating the air and soil with lethal asbestos dust.

1 XXX.

2 The large concentrations of asbestos found in the soil, dust, and air at
3 the Screening Plant property clearly indicated that the plaintiffs and their family,
4 friends, workers, and customers suffered an imminent and substantial threat to
5 their health due to the contamination caused by the defendants.

6 XXXI.

7 The Grace defendants left on the Screening Plant property bulk stor-
8 age of asbestos contaminated vermiculite in piles inside and outside of various
9 buildings. The Grace defendants also left approximately 2 tons of unexpanded
10 and expanded vermiculite stacked in deteriorating bags at the property. While the
11 nursery was still being operated, the plaintiffs and/or their family members or em-
12 ployees came into daily contact with said materials and the amphibole asbestos
13 they contain.

14 XXXII.

15 Vermiculite is visible on the surface at the Screening Plant property.
16 Surface soils at the Screening Plant property contain high measured asbestos lev-
17 els scattered widely over the surface of the property. High levels of hazardous
18 substances in soils, which are largely at or near the surface, can migrate and
19 create greater risk to human health.

20 XXXIII.

21 The United States Environmental Protection Agency has confirmed
22 that the predominant fibrous habit of minerals found at the Libby Site are am-
23 phibole asbestos, a recognized human carcinogen, causing lung cancer and me-
24 sothelioma, a lethal neoplasm of the lining of the chest and abdominal cavities. All

1 of these asbestos related diseases have been found to an unprecedented extent
2 among former mine workers, their families, and nearby residents with no known
3 occupational or familial connection to the vermiculite mining and processing op-
4 erations in Libby. Cancer of the larynx and esophageal lining has also been asso-
5 ciated with exposure to asbestos.

6 XXXIV.

7 There are a large number of current and historic cases of asbestos re-
8 lated diseases centered around Libby, Montana. A single pulmonologist in Spo-
9 kane, Washington is currently treating over 200 cases of asbestos related
10 diseases among people who had either lived in Libby or worked at the mine and
11 has provided care to dozens more who have already died. Out of said physician's
12 cases were numerous incidents of apparently nonoccupational exposures. Of
13 these nonoccupational exposures, six had no family or other ties to anyone work-
14 ing at the mine. These findings suggest definitive health effects from the am-
15 phibole asbestos found at Libby.

16 XXXV.

17 Given the documented death and illnesses associated with similar ex-
18 posure circumstances to the hazardous substances found in the Libby asbestos
19 contaminated vermiculite, plaintiffs had no choice but to move out and cease doing
20 business of any kind on the Screening Plant property.

21 XXXVI.

22 Despite their knowledge of the ultrahazardous nature of asbestos, the
23 Grace defendants have chosen to elevate corporate profit over community safety
24 and to expose the plaintiffs, their family, their workers, their friends, and their

1 visitors to dangerous levels of asbestos, while failing to warn of the risks to which
2 they were exposed.

3 XXXVII.

4 The business operations for profit of the Grace defendants, defendant
5 Kootenai Development Company, defendant Robinson Insulation Company, and
6 defendant Michael D. Ray resulted in the routine discharge, release, and trans-
7 portation of asbestos into the air, water, and soil of Libby, Montana. Asbestos
8 from the defendants' business operations was carried and disbursed in the air that
9 the plaintiffs breathed. Asbestos dust from the defendants' facilities was carried by
10 vehicles to plaintiffs' property and home, thereby exposing plaintiffs, their family,
11 their friends, their workers, and their customers to unreasonably dangerous and
12 deadly asbestos-laced vermiculite.

13 XXXVIII.

14 The Grace defendants, defendant Kootenai Development Company,
15 and defendant Robinson Insulation Company knowingly and/or carelessly per-
16 mitted asbestos-laced vermiculite to be transported from their facilities onto prop-
17 erty owned by the plaintiffs.

18 XXXIX.

19 Asbestos was transported to and discarded on the Screening Plant
20 property by the Grace defendants and defendant Michael D. Ray. Hazardous
21 asbestos fiber residue presently contaminates the entire Screening Plant property.

22 XL.

23 Throughout the entire period in which they operated vermiculite ore
24 mining operations in Lincoln County, Montana, the Grace defendants took active

1 and affirmative steps to conceal the risks and fact of asbestos exposure and con-
2 tamination affecting present and former residents of Lincoln County, Montana, and
3 the workers and their households, who processed the contaminated ore.

4 XLI.

5 Although the Grace defendants' own internal memoranda acknowl-
6 edged the health risks of their asbestos-laced vermiculite since the early 1960s
7 and acknowledge, since at least 1965, the fact that air monitoring measured as-
8 bestos contamination in nearby Libby, it was not until January, 2000, that the
9 Grace defendants first publicly disclosed the existence of health risks to present
10 and former residents of Libby, Montana and of Lincoln County, Montana.

11 XLII.

12 Defendant Kootenai Development Company has failed to take ap-
13 propriate actions to remediate continuing contamination at Zonolite Mountain, and
14 has cooperated with the Grace defendants in falsely minimizing the extent of prior
15 and continuing contamination potential.

16 XLIII.

17 Defendant Kootenai Development Company's own business operations
18 for profit have caused further contamination of the air and water on the plaintiffs'
19 property and further exposed the plaintiffs to unreasonably dangerous asbestos
20 contaminated vermiculite.

21 XLIV.

22 The Grace defendants and defendant Robinson Insulation manufac-
23 tured and sold to the plaintiffs expanded vermiculite, which was contaminated with
24 asbestos and unreasonably dangerous for use by the plaintiffs.

1 FIRST CAUSE OF ACTION

2 (Fraud)

3 Plaintiffs reallege paragraphs I through XLIV of the General Allega-
4 tions as paragraphs I through XLIV of this First Cause of Action.

5 XLV.

6 The Grace defendants misrepresented to the plaintiffs the past and ex-
7 isting condition of the Screening Plant property purchased from the Grace defen-
8 dants by the plaintiffs. The Grace defendants represented that said property was
9 free of toxic substances and safe for human habitation and use.

10 XLVI.

11 The Grace defendants' representations concerning the Screening
12 Plant property were in fact untrue. The Screening Plant property was, prior to and
13 at the time of plaintiff's purchase of the property, contaminated by massive
14 amounts of deadly asbestos.

15 XLVII.

16 The Grace defendants' misrepresentations concerning the Screening
17 Plant property were material to the purchase of the property by the plaintiffs. The
18 plaintiffs would not have purchased the property had they known the true facts.

19 XLVIII.

20 The Grace defendants made the misrepresentations concerning the
21 condition of the Screening Plant property with knowledge of the falsity of the mis-
22 representations and without any reasonable ground for believing them to be true.

23 IL.

24 The Grace defendants made the misrepresentations concerning the

1 condition of the Screening Plant property with the intent to induce that the plaintiffs
2 rely on such misrepresentations and purchase the property.

3 L.

4 The plaintiffs were unaware of and ignorant of the falsity of the repre-
5 sentations of the Grace defendants' misrepresentations concerning the condition
6 of the Screening Plant property.

7 LI.

8 The plaintiffs relied on the Grace defendants' misrepresentations con-
9 cerning the condition of the Screening Plant property as if such misrepresentations
10 were true.

11 LII.

12 The plaintiffs were justified in relying on the Grace defendants' misrep-
13 resentations as if they were true.

14 LIII.

15 The plaintiffs suffered property damage, as hereinafter alleged, by rely-
16 ing on the Grace defendants' misrepresentations, which led them to purchase the
17 contaminated Screening Plant property, caused the demise of their business, and
18 destroyed their ability to enjoy and make use of their property.

19 **SECOND CAUSE OF ACTION**

20 (Constructive Fraud)

21 Plaintiffs reallege paragraphs I through LIII of the First Cause of Action
22 as paragraphs I through LIII of this Second Cause of Action.

23 LIV.

24 The Grace defendants had a duty to speak the truth and to provide

1 complete, accurate, and truthful information concerning the condition of the
2 Screening Plant property prior to selling the property to the plaintiffs.

3 LV.

4 Without justification and for economic gain, the Grace defendants, by
5 both words and deeds, engaged in a course of deceitful conduct in order to con-
6 ceal and to cover up the dangerous and deadly condition of the contaminated
7 Screening Plant property and to avoid their responsibilities under the law to the
8 plaintiff and to the public at large.

9 LVI.

10 The Grace defendants engaged in said course of deceitful conduct to
11 gain financial advantage by misleading the plaintiffs to their prejudice.

12 LVII.

13 The Grace defendants' constructive fraud proximately caused property
14 damage to plaintiffs, including loss of use of their property, loss of enjoyment of
15 their property, and the destruction of their business operated on said property.

16 THIRD CAUSE OF ACTION

17 (Deceit)

18 Plaintiffs reallege paragraphs I through LVII of the Second Cause of
19 Action as paragraphs I through LVII of this Third Cause of Action.

20 LVIII.

21 The Grace defendants willfully deceived the plaintiffs with the intent to
22 induce them to alter their position to their injury. The Grace defendants sup-
23 pressed facts and gave information of other facts which were misleading and
24 thereby damaged the plaintiffs.

1 LIX.

2 The acts and omissions of the Grace defendants constitute deceit as
3 that term is defined in § 27-1-712, MCA.

4 LX.

5 The Grace defendants' deceitful acts and omissions proximately
6 caused property damage to the plaintiffs, including loss of use of their property,
7 loss of enjoyment of their property, and the destruction of their business operated
8 on said property.

9 **FOURTH CAUSE OF ACTION**

10 (Violation of the 1972 Montana Constitution)

11 Plaintiffs reallege paragraphs I through LX of the Third Cause of Action
12 as paragraphs I through LX of this Fourth Cause of Action.

13 LXI.

14 The Grace defendants and Kootenai Development Company are
15 present and former owners and/or operators of Zonolite Mountain, the source of
16 asbestos contamination affecting the plaintiffs.

17 LXII.

18 Plaintiffs possess the following inalienable rights under the 1972
19 Montana Constitution, Art. II, § 3:

20 All persons are born free and have certain
21 inalienable rights. They include the right to a
22 clean and healthful environment and the
23 rights of pursuing life's basic necessities, en-
24 joying and defending their lives and liberties,
acquiring, possessing and protecting proper-
ty, and seeking their safety, health and hap-
piness in all lawful ways.

1 LXIII.

2 The defendants' past, present, and continuing asbestos contamination
3 of Zonolite Mountain and plaintiffs' property, violate the inalienable right of plain-
4 tiffs to a clean and healthful environment.

5 LXIV.

6 As a direct and proximate result of the violation of the inalienable enu-
7 merated rights of plaintiffs under the 1972 Montana constitution, plaintiffs have
8 suffered property damage, including loss of use of their property, loss of enjoyment
9 of their property, and the destruction of their business operated on said property.

10 FIFTH CAUSE OF ACTION

11 (Negligence)

12 Plaintiffs reallege paragraphs I through LXIV of the Fourth Cause of
13 Action as paragraphs I through LXIV of this Fifth Cause of Action.

14 LXV.

15 The defendants owed the plaintiffs a duty to act with reasonable care
16 so as not to jeopardize the plaintiffs' health, welfare and right to a clean and
17 healthful environment.

18 LXVI.

19 Defendants breached their duty of care by the following acts and/or
20 omissions:

21 (a) The Grace defendants and Kootenai Development failed to
22 conduct their business operations for profit on Zonolite Mountain with due care,
23 thereby causing the release of asbestos;

24 (b) The Grace defendants and Kootenai Development failed to

1 cease and/or shut down the operations at Zonolite Mountain prior to release of
2 asbestos contamination;

3 (c) The Grace defendants and Kootenai Development failed clean
4 up and remediate promptly the asbestos contamination in and around the Zonolite
5 Mountain operations and on the Screening Plant property;

6 (d) The Grace defendants and Kootenai Development failed to
7 conduct appropriate testing to assess the nature and extent of the asbestos con-
8 tamination in and around the Zonolite Mountain operations;

9 (e) The Grace defendants and Kootenai Development failed to
10 conduct appropriate testing to assess the nature and extent of the asbestos con-
11 tamination in and about the plaintiffs' property;

12 (f) The Grace defendants and Kootenai Development failed to ex-
13 ercise reasonable care to supervise and to train the personnel assigned to oper-
14 ate, remediate and test the Zonolite Mountain facilities and the Screening Plant
15 property;

16 (g) Defendant Jack DeShazer failed to use reasonable care to ob-
17 tain complete and accurate information concerning the condition of the Screening
18 Plant property prior to listing said property for sale on behalf of the Grace defen-
19 dants and prior to selling said property to the plaintiffs;

20 (h) Defendant Jack DeShazer failed to communicate accurate and
21 complete information concerning the condition of the Screening Plant property
22 prior to selling it to the plaintiffs;

23 (i) Defendant Jack DeShazer failed to disclose the serious and
24 life-threatening defects in the Screening Plant property, which he sold to the

1 plaintiffs on behalf of the Grace defendants;

2 (j) Defendant Michael D. Ray negligently participated in the dump-
3 ing of toxic waste, consisting of asbestos laden soils and rocks, on the Screening
4 Plant property; and

5 (k) The Grace defendants, Kootenai Development, Michael D.
6 Ray, and Jack DeShazer failed to warn plaintiffs of the existence of past, present
7 and future asbestos contamination in and about Zonolite Mountain and on the
8 plaintiffs' property.

9 LXVII.

10 The foregoing acts, or failures to act, directly and proximately caused
11 damage to plaintiffs' property, including loss of use of their property, loss of enjoy-
12 ment of their property, and the destruction of their business operated on said
13 property.

14 SIXTH CAUSE OF ACTION

15 (Private Nuisance)

16 Plaintiffs reallege paragraphs I through LXVII of the Fifth Cause of Ac-
17 tion as paragraphs I through LXVII of this Sixth Cause of Action.

18 LXVIII.

19 Plaintiffs have a present proprietary interest in said Screening Plant
20 property located in Lincoln County, Montana.

21 LXIX.

22 The past, present and continuing conduct of defendants, and each of
23 them, constitutes a nuisance in that it is specially and generally injurious to the
24 health and offensive to the senses of plaintiffs, and specially interfered with,

1 unlawfully obstructed, and disturbed plaintiffs' comfortable enjoyment of the right to
2 a clean and healthful environment and enjoyment of their property.

3 **SEVENTH CAUSE OF ACTION**

4 (Trespass)

5 Plaintiffs reallege paragraphs I through LXIX of the Sixth Cause of Ac-
6 tion as paragraphs I through LXIX of this Seventh Cause of Action.

7 LXX.

8 At all times relevant to this complaint, plaintiffs were in lawful posses-
9 sion of the Screening Plant property located in Lincoln County, Montana.

10 LXXI.

11 Defendants intentionally and recklessly committed the wrongful act of
12 trespass by causing asbestos contaminated vermiculite and asbestos contamina-
13 tion to invade the real and personal property of the plaintiffs.

14 LXXII.

15 Defendants' conduct and trespass were the legal cause of damages to
16 the real and personal properties of plaintiffs.

17 **EIGHTH CAUSE OF ACTION**

18 (Common Law Strict Liability)

19 Plaintiffs reallege paragraphs I through LXXII of the Seventh Cause of
20 Action as paragraphs I through LXXII of this Eighth Cause of Action.

21 LXXIII.

22 Defendants' activities, including but not limited to, the present and/or
23 former ownership of Zonolite Mountain, former operation of Zonolite Mountain ver-
24 miculite mining operations, and dissemination of contaminated onto the property of

1 the plaintiffs are ultra-hazardous activities in that:

2 (a) there exists a high degree of prior, present and continuing contam-
3 ination in the form of exceedingly toxic asbestos, which creates an unacceptable
4 risk of harm on plaintiffs' real and personal properties; to plaintiffs' family mem-
5 bers; and to other persons who enter onto the plaintiffs' property; and

6 (b) there is a strong likelihood that the harm resulting from prior, pres-
7 ent and future exposure to asbestos will be great.

8 LXXIV.

9 Defendants' actions were a legal cause of damages to the plaintiffs'
10 property, including loss of use of their property, loss of enjoyment of their property,
11 and the destruction of their business operated on said property.

12 NINTH CAUSE OF ACTION

13 (Strict Products Liability)

14 Plaintiffs reallege paragraphs I through LXXIV of the Eighth Cause of
15 Action as paragraphs I through LXXIV of this Ninth Cause of Action.

16 LXXV.

17 At times relevant to this action, the Grace defendants and defendant
18 Robinson Insulation were engaged in the business of manufacturing, fabricating,
19 modifying, expanding, labeling, distributing, offering for sale, supplying, selling,
20 marketing, packaging, and advertising a certain substance, the generic name of
21 which is vermiculite. Said vermiculite was laced with deadly asbestos.

22 LXXVI.

23 The Grace defendants and defendant Robinson Insulation knew and
24 intended that the above referenced vermiculite and asbestos containing products

1 would be used without inspection for defects therein or in any of their component
2 parts and without knowledge of the hazards involved in such use.

3 LXXVII.

4 Defendant Robinson Insulation sold said asbestos laced vermiculite to
5 the plaintiffs for use in their nursery business.

6 LXXVIII.

7 Said asbestos-laced vermiculite was defective and unreasonably dan-
8 gerous for its intended purpose in that the inhalation of asbestos fibers causes se-
9 rious disease and/or death. The defect existed in the said product at the time it left
10 the possession of the Grace defendants and defendant Robinson Insulation. Said
11 product did, in fact, cause damage to plaintiffs' property, while being used in a rea-
12 sonably foreseeable manner, thereby rendering the same defective, unsafe and
13 unreasonably dangerous for use.

14 LXXIX.

15 Plaintiffs did not know of the substantial danger of using said products, nor
16 was said danger readily recognizable by the plaintiffs. The Grace defendants and
17 defendant Robinson Insulation further failed to adequately warn of the risk of con-
18 tamination to which plaintiffs' property was exposed.

19 LXXX.

20 As a direct and proximate result of the unreasonably dangerous
21 asbestos-laced vermiculite of the Grace defendants and Robinson Insulation, and
22 as a direct and proximate result of the unlawful actions of said defendants, plain-
23 tiffs' property was contaminated by unreasonably dangerous asbestos fibers re-
24 sulting in property damages as alleged herein.

DAMAGES

LXXXI.

As a direct, proximate, and legal result of the defendants' unlawful conduct alleged herein the plaintiffs have suffered damages to their property interests in real and personal property.

LXXXII.

As a direct, proximate, and legal result of the defendants' unlawful conduct alleged herein the plaintiffs have suffered damage related to the loss of use of their real and personal property.

LXXXIII.

As a direct, proximate, and legal result of the defendants' unlawful conduct alleged herein the plaintiffs have suffered property damage related to the destruction of their enjoyment of their property.

LXXXIV.

As a direct, proximate, and legal result of the defendants' unlawful conduct alleged herein the plaintiffs have suffered property damage related to the destruction of their business operated on their property.

LXXXV.

In their dealings with the plaintiffs, the Grace defendants acted with utter and complete disregard for the rights and interests of the plaintiffs. The conduct of the Grace defendants was so fraudulent, malicious, wanton, willful and egregious as to justify an award of punitive or exemplary damages to punish the Grace defendants and to serve as an example to the Grace defendants and to other similarly situated entities that conduct of the kind engaged in by the Grace

1 defendants is unacceptable in our society and will not be tolerated.

2 JURY DEMAND

3 Plaintiffs hereby demand a trial by jury.

4 WHEREFORE, plaintiffs pray for judgment against defendants for:

5 1. A reasonable full measure of damages for the loss of use of plain-
6 tiffs' contaminated property.

7 2. A reasonable full measure of damages for plaintiffs' loss of enjoy-
8 ment of the contaminated property.

9 3. A reasonable full measure of damages for the destruction of and
10 interruption of plaintiffs' business on the contaminated property.

11 4. For punitive and exemplary damages in a sufficient amount to pun-
12 ish the Grace defendants and to serve as a warning to similarly situated entities
13 that conduct of the kind engaged in by the Grace defendants is unacceptable in
14 our society and will not be tolerated.

15 5. Such other relief as this court may deem just and appropriate.

16 DATED this 2nd day of August, 2000.

17 THUESON & LAMB

18 LEWIS, HUPPERT & SLOVAK, P.C.

19
20 By: 

21 Tom L. Lewis
22 P. O. Box 2325
23 Great Falls, MT 59403
24 Attorneys for Plaintiffs


TO: THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA)
AND ANY AND ALL OTHER AGENCIES AND ENTITIES

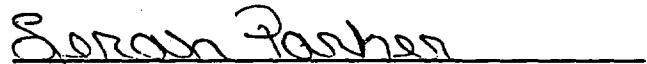
Please be advised that we, MEL AND LERAH PARKER, 5000 Hwy. 37 North, Libby, Montana, have retained the law firms of THUESON & LAMB, 213 Fifth Avenue, P. O. Box 535, Helena, MT 59624 and LEWIS, HUPPERT & SLOVAK, P.C., 725 Third Avenue North, P. O. Box 2325, Great Falls, Montana 59403, to assist us with various legal matters.

This will authorize you to provide to the law firms of THUESON & LAMB and LEWIS, HUPPERT & SLOVAK, P.C. any and all information which they may request on or for our behalf.

This authorization shall expire two (2) years after execution.

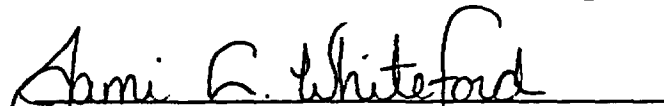
A photocopy of this authorization shall have the same force and effect as an executed original.


MEL PARKER


LERAH PARKER

2000. SUBSCRIBED AND SWORN to before me this 27 day of July,

(NOTARIAL SEAL)


Notary Public for the State of Montana
Residing at: Great Falls
My Commission Expires: 12-2-02